

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UE-161123

**PUGET SOUND ENERGY'S ANSWER
TO THE PETITION OF THE
NORTHWEST AND
INTERMOUNTAIN POWER
PRODUCERS COALITION'S
PETITION FOR ADMINISTRATIVE
REVIEW OF AN INTERLOCUTORY
ORDER DENYING INTERVENTION**

I. INTRODUCTION

1 Pursuant to WAC 480-07-810(3), Puget Sound Energy (“PSE”) answers the petition for administrative review filed by the Northwest and Intermountain Power Producers Coalition (“NIPPC”) of the Administrative Law Judge’s (“ALJ”) Order 04 denying NIPPC intervention (“Interlocutory Petition”). NIPPC fails to demonstrate that it has a substantial interest in this proceeding because it is not a customer of PSE. NIPPC is an advocacy trade group financed by members who are unregulated independent power producers, electricity service suppliers, transmission companies, and other commercial and industrial entities. As NIPPC is only seeking intervention to further the independent business interests of its members, the public interest will not be served by NIPPC’s intervention in this case. Moreover, the case already has numerous sophisticated and experienced parties and stakeholders who collectively have sufficient knowledge and expertise to address the issues in this case. Accordingly, NIPPC’s

involvement in this proceeding will not only inappropriately broaden and encumber the issues presently at issue before the Commission, but could competitively harm PSE and the other participants. Order 04 should be affirmed by the Commission.

II. BACKGROUND

A. Proposed Revision to WN U-60, Tariff G, Schedule 451

2 On October 7, 2016, PSE filed with the Commission proposed revisions to WN U-60, Tariff G, Schedule 451 (Schedule 451). The purpose of Schedule 451 would be to implement a new retail wheeling service for large non-core customers which would enable the customer, at its option, to acquire energy from a power supplier other than PSE.¹ PSE also seeks approval of a Service Agreement executed by Microsoft Corporation (“Microsoft”) containing a Power Supply Stranded Cost Charge of \$23.685 million payable by Microsoft to PSE upon the commencement of service under Schedule 451.²

3 Schedule 451 would be optional to customers who have maintained an average of 10 aMW at one or more customer sites served under Schedule 40 over the entire test year of the most recent general rate case.³ The total amount of electricity that can collectively be provided by power suppliers other than PSE would not exceed 100 megawatts at any one time.⁴ Any Schedule 451 customer would be required to take service under Schedule 451 for all loads at its locations served under Schedule 40 (Large General Service Greater Than 3 aMW).⁵

¹ Puget Sound Energy Advice Letter, at 2 (Oct. 7, 2016).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

4 Customers who choose to obtain energy under Schedule 451 would bear responsibility
for purchasing energy from a power supplier other than PSE.⁶ The cost or availability of such
energy would not be the responsibility of PSE's nor would it constitute grounds for the
customer to return to core status or entitle the customer to PSE's generation resources.⁷

5 Following PSE's filing of Schedule 451, the Commission suspended the tariff and issued
a complaint to investigate whether the proposed tariff is in the public interest.⁸

B. NIPPC's Petition For Intervention Is Denied

6 NIPPC "is a membership-based advocacy group representing electricity market
participants in the Pacific Northwest."⁹ NIPPC's members are unregulated independent power
producers, electricity service suppliers, transmission companies and commercial and industrial
entities.¹⁰ As explained by NIPPC, "The purpose of NIPPC is to represent the interests of
independent power producers and marketers in developing rules and policies that help achieve
a competitive electric power supply market in the Pacific Northwest."¹¹

7 On November 2, 2016, NIPPC filed a petition to intervene in this proceeding ("Petition").
According to its Petition, NIPPC seeks intervention because of its extensive experience in
state and federal regulatory proceedings and because it believes that Schedule 451 could affect
NIPPC members who sell power in Washington.¹² NIPPC states that if granted intervention
that it "plans to participate and review PSE's proposed filings to ensure it complies with

⁶ *Id.* at 2-3.

⁷ *Id.* at 4-5.

⁸ *Washington Utilities & Transportation Commission v. Puget Sound Energy*, Docket No. UE-161123, Order 01, Complaint and Order Suspending Tariff Revisions (Oct. 18, 2016).

⁹ Northwest & Intermountain Power Producers Coalition, <http://nippc.org/> (last accessed December 11, 2016).

¹⁰ *Id.*

¹¹ Docket No. UE-161123, NIPPC Petition to Intervene, ¶ 4 (Nov. 2, 2016).

¹² *Id.*, ¶¶ 5-6.

Washington and federal law”¹³ and that it seeks “full party status in this proceeding and to appear and participate in all matters as may be necessary and appropriate; and to present evidence, call and examine witnesses, cross-examine witnesses, present argument, and to otherwise fully participate in the proceedings.”¹⁴

8 On November 4, 2016, PSE responded to NIPPC’s Petition and objected to NIPPC’s intervention on the grounds that as an unregulated trade association whose unregulated members are private industry participants, that NIPPC has no substantial interest that can or should be addressed by the Commission.¹⁵ In addition, because NIPPC is only seeking intervention to further the independent business interests of its members, the public interest will not be served by NIPPC’s intervention in this case.¹⁶

9 On November 7, 2016, NIPPC replied to PSE’s opposition arguing that its intervention is in the public interest because of its “extensive expertise” and a “unique perspective” on the matters at issue in the case.¹⁷ NIPPC believes that it also has a substantial interest in the proceeding because while it “does not advocate on behalf of any specific NIPPC members, its members’ ability to participate in the Commission approved Schedule 451 and sell power to eligible customers may be directly impacted by this proceeding.”¹⁸ Finally, NIPPC asserts that the Washington Supreme Court decision in *Cole v. Washington Utilities & Transportation Commission*¹⁹ is antiquated and no longer applies in evaluating interventions.²⁰

¹³ *Id.*, ¶ 8.

¹⁴ *Id.*, ¶ 9.

¹⁵ Docket No. UE-161123, Puget Sound Energy Response in Opposition to NIPPC Petition to Intervene, ¶¶ 1, 7-11 (Nov. 4, 2016).

¹⁶ *Id.*, ¶¶ 12-16.

¹⁷ Docket No. UE-161123, NIPPC Reply to Puget Sound Energy Response in Opposition to NIPPC Petition to Intervene, ¶ 2 (Nov. 7, 2016) (“NIPPC Reply”).

¹⁸ *Id.*, ¶ 3.

¹⁹ 79 Wn.2d 302, 485 P.2d 71 (1971).

²⁰ NIPPC Reply, ¶¶ 11-17.

10 On November 14, 2016, a Prehearing Conference was held before the ALJ where the ALJ heard arguments regarding NIPPC's petition.

11 On November 22, 2016, the ALJ issued Order 04 denying NIPPC intervention. The ALJ rejected NIPPC's argument that it has a substantial interest in Schedule 451 because it might impact its members' ability to sell power to eligible customers. The ALJ observed that contrary to NIPPC's claim, the Commission does not have jurisdiction over independent power producers like its members or to contracts between eligible customers and independent power producers.²¹ The ALJ explained that the scope of this proceeding is to merely determine "under what circumstances a small group of customers may terminate service with PSE and what terms and conditions should be imposed on departing customers to ensure that those who continue taking service from PSE are not harmed in the process,"²² and not the terms and conditions by which customers may enter into contracts with NIPPC's members. Accordingly, the ALJ held the NIPPC failed to establish a substantial interest in the proceeding.

12 As to NIPPC's public interest argument, the ALJ reaffirmed that under *Cole*, the purpose of the public interest requirement is to protect the interests of customers of regulated utilities, not "a trade association whose members are nonregulated competitors of PSE."²³ The ALJ determined further that "[t]he association has not demonstrated, with any specificity, that this proceeding will involve issues making NIPPC's participation necessary or in furtherance of

²¹ Docket No. UE-161123, Order 04, ¶ 19 (Nov. 22, 2016) ("Order 04").

²² *Id.*, ¶ 18.

²³ *Id.*, ¶¶ 20-21.

the public interest,” and that in balancing the competitive concerns of PSE and Microsoft resulting from NIPPC’s participation, that “NIPPC has not met its burden of proof.”²⁴

13 On December 2, 2016, NIPPC filed a Petition for Interlocutory Review of Order 04.

III. ARGUMENT

14 The Commission may grant a petition to intervene only if the petitioner “discloses a substantial interest in the subject matter of the proceeding or if the petitioner’s participation is in the public interest.”²⁵ The petitioner bears the burden to demonstrate it meets these requirements. In demonstrating substantial interest, the Washington Supreme Court has held that neither nonregulated competitors nor nonregulated potential competitors of a regulated entity have a substantial interest in a Commission rate proceeding as a matter of law.²⁶ Thus, a nonregulated business entity’s commercial business interests in the outcome of a proceeding—and the potential economic or market impacts of the proceeding—are typically insufficient to grant the nonregulated entity the right to intervene.²⁷ Likewise, “public interest,” in the context of the public service laws, is “that only of *customers* of the utilities which are regulated.”²⁸ The independent business interests of a nonregulated, non-customer of a regulated entity, generally do not qualify as a public interest warranting intervention.

²⁴ *Id.*, ¶ 24.

²⁵ WAC 480-07-355(3).

²⁶ *Cole*, 79 Wn.2d at 305-06, 485 P.2d 7; *Washington Utilities & Transportation Commission v. Cascade Natural Gas Corp.*, Docket No. UG-070332, Order 03, ¶¶ 19-25 (Oct. 12, 2007); *In the Matter of the Petition of GTE Northwest Inc. For Depreciation Accounting Changes*, Docket UT-961632, 1997 WL 35263579 (Wash. U.T.C. Mar. 28, 1997) (Third Supplemental Order Accepting Review of Interlocutory Order; Denying Request to Reverse Interlocutory Ruling; Denying Petitions to Intervene).

²⁷ *SeaTac Shuttle, LLC, C-1077 v. Kenmore Air Harbor, LLC*, Docket TC-072180, Order 03, ¶¶ 47-51 (Oct. 31, 2008); Docket No. UG-070332, Order 03, ¶¶ 19-25; *In the Matter of the Petition of GTE Northwest Inc.*, 1997 WL 35263579.

²⁸ *Cole*, 79 Wn.2d at 306, 485 P.2d 71 (emphasis added) (“Although RCW 80.01.040(3) demands regulation in the public interest, that mandate is qualified by the following clause ‘as provided by the public service laws * * * Appellants fail to point out any section of Title 80 which suggests that nonregulated fuel oil dealers are within the jurisdictional concern of the commission. An administrative agency must be strictly limited in its operations to those powers granted by the legislature.’”) (citation omitted).

Because NIPPC represents the competitive business interests of unregulated entities, the ALJ correctly determined that NIPPC cannot demonstrate a substantial interest in this proceeding, nor would NIPPC's intervention benefit the public. Order 04 should be affirmed.

A. NIPPC Does Not Have A Substantial Interest That Can Be Addressed By the Commission

15 NIPPC should not be permitted to intervene because NIPPC and each of its members is a nonregulated business entity that cannot, as a matter of law, have a substantial interest in the proceeding. In *Cole*, the Washington Supreme Court affirmed the Commission's denial of intervention to an association of nonregulated fuel oil dealers because as nonregulated businesses, the association could not have a substantial interest in the proceeding.²⁹ The same rationale applies in this case. Indeed, when pressed at the Prehearing Conference, NIPPC conceded that to meet the substantial interest standard under *Cole*, a party must be a customer of the utility, which it is not.³⁰

16 To circumvent *Cole*, however, NIPPC's argues that *Cole* is "antiquated" and that the ALJ and PSE incorrectly stated the legal standard for granting intervention.³¹ This is incorrect. While it is true that the decision in *Cole* precedes Washington's adoption of the Administrative Procedure Act ("APA"), *Cole* has never been overturned by the Supreme Court, and numerous Commission decisions since the adoption of the APA have cited to and relied on *Cole* for evaluating whether a competitor should be granted intervention. NIPPC totally fails to address any of these post-APA Commission cases affirming and relying on *Cole* to deny intervention to nonregulated competitors.

²⁹ *Id.* at 305-10, 485 P.2d 71.

³⁰ TR. 17:16-21, 19:18-25.

³¹ Docket No. UE-161123, NIPPC Petition for Administrative Review of an Interlocutory Order Denying Intervention, ¶¶ 18-20 (Dec. 2, 2016) ("Interlocutory Petition").

17 For example, in *Washington Utilities & Transportation Commission v. Cascade Natural Gas Corp.*, Cost Management Service, Inc. (“CMS”) sought intervention when Cascade Natural Gas, Inc. (“Cascade”) filed tariff revisions providing gas supply service options to non-core customers.³² CMS argued that as a competitive gas marketer and an agent for some of Cascade’s customers in providing gas-related services, its interests were aligned with Cascade’s ratepayers and that its intervention should be granted because it would represent the interests of Cascade’s customers.³³ The ALJ (Rendahl, J.) denied CMS intervention holding that under *Cole*, CMS could not demonstrate substantial interest because it is beyond the jurisdiction of the Commission to consider the impact of Cascade’s tariff on an unregulated competitor.³⁴

18 CMS sought interlocutory review arguing “it has a vital interest in participating in the tariff docket to ensure that the Commission’s decision in the complaint proceeding produces remedies that are fair and effective . . . and [because] only CMS has the expertise to address natural gas supply, pricing, and pipeline capacity issues.”³⁵ Upon administrative review by the Commission, the Commission “clarif[ied] the standard for intervention in a proceeding and the limits of the Commission’s jurisdiction under *Cole*.”³⁶ In denying intervention, the Commission affirmed Judge Rendahl’s determination that “[f]ollowing the precedent established in *Cole*,” the Commission cannot “address the economic effects of a regulated public utility’s rates or practices on an unregulated competitor.”³⁷ Under *Cole*, “only

³² Docket No. UG-070332, Order 02 (May 17, 2007).

³³ *Id.*, ¶¶ 22-23.

³⁴ *Id.*, ¶ 24.

³⁵ Docket No. UG-070332, Order 03, ¶ 17.

³⁶ *Id.*, ¶ 22.

³⁷ *Id.*

customers of a regulated utility have standing to intervene before the Commission to address the regulated utility's rates."³⁸

19 CMS's arguments for why it should intervene are remarkably similar to NIPPC. CMS argued that it had a substantial interest because it provided services to Cascade customers directly tied to the tariff at issue, allegedly represented the interests of Cascade's customers, and possess unique expertise that would benefit the Commission.³⁹ Similarly, NIPPC believes it should be granted intervention because if PSE customers elect non-core status under Schedule 451, they will need to obtain energy from other power suppliers, which NIPPC speculates could be its members.⁴⁰ NIPPC asserts it has the right to intervene to ensure that "the terms and conditions of Schedule 451" are—from NIPPC's perspective—appropriate.⁴¹ NIPPC also believes that it has unique expertise and perspective that are essential for a successful determination in this case.⁴² The Commission in CMS expressly rejected these kinds of interests aimed only at advancing the competitive interests of a nonregulated competitor:

We agree that CMS has not demonstrated a substantial interest in the subject matter of the tariff proceeding. CMS is a competitor of Cascade in supply gas to non-core customers, and is not subject to Commission regulation. While CMS may be interested in how the Commission resolves Cascade's proposed tariff, CMS is not a customer of Cascade and has no "substantial interest," as the term is used in determining intervention and standing.⁴³

As explained further by Judge Rendahl, "CMS is not a customer of Cascade, nor an association representing Cascade customers' interests, and may represent no other interests but

³⁸ *Id.*, ¶ 24.

³⁹ *Id.*, ¶ 23.

⁴⁰ Interlocutory Petition, ¶ 30.

⁴¹ *Id.*

⁴² *Id.*, ¶¶ 2-3, 9.

⁴³ Docket No. UG-070332, Order 03, ¶ 20.

its own. In fact, *CMS demonstrates its self-interest in preserving its competitive position* in its motion to intervene.”⁴⁴

20 Like CMS, NIPPC’s interest in Schedule 451 is entirely self-serving and worse, is completely non-jurisdictional. NIPPC seeks intervention and direct involvement in Schedule 451, including apparently involvement in drafting the terms and conditions of Schedule 451, to ensure that Schedule 451 is competitively advantageous to its members. Not only does NIPPC have no basis for opining on the conditions by which a PSE customer chooses to elect non-core status under Schedule 451, but as an “advocate” of independent power suppliers, NIPPC’s only legitimate interest is on the terms and conditions under which a non-core customer acquires alternative energy from an independent power supplier, which is beyond the jurisdiction of the Commission and the scope of this case. The Commission simply does not have oversight over independent power suppliers or contracts for such services.⁴⁵

21 NIPPC conceded in its Interlocutory Petition that under Schedule 449, the Commission made clear that “the simple act of selling power to a customer under Schedule 449 is not, by itself, sufficient to bring the seller within our jurisdiction.”⁴⁶ NIPPC’s interest in Schedule 451 is no different. Indeed, at the Prehearing Conference, NIPPC admitted that its concerns with Schedule 451 centered on interconnection and transmission service in relation to its members, concerns which could only be addressed in a Federal Energy Regulatory Commission proceeding—not a Commission proceeding.⁴⁷ The introduction of such issues by NIPPC would unnecessarily encumber and delay a resolution of the core issues in this case.

⁴⁴ Docket No. UG-070332, Order 02, ¶ 24.

⁴⁵ Order 04, ¶ 18.

⁴⁶ Interlocutory Petition, ¶ 39 (citing *Air Liquide America Corp. v. PSE*, Docket Nos. UE-001952 and UE-001959 Eleventh Supplemental Order, at ¶¶ 47-53 (Apr. 5, 2001)).

⁴⁷ TR. 16:23-17:15, 20:9-19, 21:1-17.

The Commission should not allow NIPPC to bully its way into the proceeding in order to obtain a competitive advantage over PSE and PSE's customers that may elect to purchase energy from alternative power suppliers.

22 The cases NIPPC relies on do not support its position. NIPPC directs the Commission to Docket No. UE-144160 when Pacific Power & Light ("Pacific Power") proposed revisions to its methodology for calculating avoided cost rates. The Commission granted the intervention of the Renewable Energy Coalition whose members sold power to Pacific Power and appropriately had a substantial interest in the proceeding.⁴⁸ NIPPC's suggestion that this case is "analogous" to the present case is strange since neither NIPPC nor its members sell power to PSE and currently no NIPPC member sells power to any current PSE customer who may in the future elect non-core status under 451. The intervention granted in Docket No. UE-144160 lies entirely contrary to NIPPC's position.

23 Likewise, NIPPC's suggestion that the Commission's recent decision to allow the intervention of two HVAC trade associations that would be impacted by a PSE tariff that would directly compete with the trade associations' members by leasing HVAC equipment in the same marketplace demonstrates that NIPPC should also be granted intervention is incorrect.⁴⁹ As the ALJ observed, the intervention of the HVAC trade associations in that case was warranted because PSE was seeking to enter the HVAC marketplace as a competitor.⁵⁰ Understanding how the market would be impacted by a monopoly entity entering the competitive market was a critical issue in the case that warranted the involvement of current

⁴⁸ Docket No. UE-144160, Order 02 at 2. No party opposed of the Renewable Energy Coalition's petition to intervene and it was granted without issue.

⁴⁹ Interlocutory Petition, ¶ 36.

⁵⁰ Order 04, ¶ 22.

market participants.⁵¹ And notably, in granting intervention in that case, the Commission made clear that it was granting intervention on a restricted basis to only “consider the market for HVAC equipment *to the extent necessary to determine the effect of the tariffs on PSE’s customers, not the impact on other market participants.*”⁵²

24 Thus, as a “market participant,” the scope of intervention permitted in the HVAC case would not have even addressed the types of concerns that NIPPC raises in this case. Unlike the HVAC case, PSE is not seeking to enter the independent power producer market nor is the independent power producer market even at issue.⁵³ The purpose of Schedule 451 is to simply provide a process by which qualifying PSE customers can elect non-core status. Where and from whom they choose to purchase energy from at that point is beyond the scope of the proceeding as the Commission would not have any jurisdiction whatsoever over those interests. The circumstances in the present case are not comparable to the HVAC case.

25 NIPPC cannot establish a substantial interest in this matter warranting intervention.

B. NIPPC’s Intervention Does Not Benefit the Public Interest

26 NIPPC offers several reasons why it believes its intervention would benefit the public, each of which fails. On the one hand, NIPPC argues that it should be granted intervention to protect the competitive interests of its members and on the other, NIPPC seeks intervention to promote generally “health electricity markets and not the specific commercial interests of any particular members.”⁵⁴ NIPPC’s dual positions are inconsistent and make it difficult to ascertain what NIPPC’s true intentions are in intervening. But given that NIPPC is an advocacy group financed by its members, any perspective offered by NIPPC would be

⁵¹ *Washington Utilities & Transportation Commission v. Puget Sound Energy*, Docket Nos. UE-151871 & UG-151872, Order 02, ¶¶ 11-13 (Jan. 7, 2016).

⁵² *Id.*, ¶ 13.

⁵³ Order 04, ¶ 22.

⁵⁴ Interlocutory Petition, ¶ 10.

inherently biased and self-serving, aimed at protecting the competitive interests of its members, not PSE customers. Accordingly, NIPPC's intervention would not benefit the public interest and Order 04 should be affirmed.

1. NIPPC Mischaracterizes the Legal Standard Justifying Intervention Under the Public Interest Requirement

27 NIPPC argues that the Commission should not adhere to the Washington Supreme Court decision in *Cole*, where the Commission and the Supreme Court held that "public interest," in the context of the public service laws, is "that only of *customers* of the utilities which are regulated."⁵⁵ NIPPC, who is not a customer of PSE, instead believes that its intervention is in the public interest "because it offers a unique perspective that no other party provides and benefits the public interest."⁵⁶

28 The independent business interests of NIPPC and its members, however, are not a public interest. As previously stated by this Commission and as cited by the ALJ, "the public interest the Commission must protect is the *interest of customers of regulated utilities, not those of an unregulated competitor.*"⁵⁷ In another post-APA case where the Commission denied intervention under *Cole* (not addressed by NIPPC), the Commission explained:

Public interest cannot be served if the elements of public convenience and necessity require consideration of activities over which the Commission has no power to control, to supervise, or to regulate in any fashion. The Commission has no power to protect the interests of businesses which it does not regulate.⁵⁸

⁵⁵ *Cole*, 79 Wn.2d at 306, 485 P.2d 71 (emphasis added) ("Although RCW 80.01.040(3) demands regulation in the public interest, that mandate is qualified by the following clause 'as provided by the public service laws * * *' Appellants fail to point out any section of Title 80 which suggests that nonregulated fuel oil dealers are within the jurisdictional concern of the commission. An administrative agency must be strictly limited in its operations to those powers granted by the legislature.") (citation omitted).

⁵⁶ Interlocutory Petition, ¶ 17.

⁵⁷ Docket No. UG-070332, Order 03, ¶ 24 (emphasis added).

⁵⁸ *Re Application CHA-221 of Brown's Limousine Crew Car, Inc.*, Order M. v. Ch. No 950, 1983 WL 908124 (Wash. U.T.C. July 18, 1983) (Commission Decision and Order Denying Exceptions; Affirming Proposed Order Granting Application As Amended).

Thus, as a nonregulated trade association whose members include private industry participants, NIPPC's competitive interests do not qualify as a public interest.⁵⁹

29 Further, NIPPC's suggestion that *Cole* is "antiquated" is simply incorrect.⁶⁰ NIPPC quotes the Commission's decision in *Washington Utilities & Transportation Commission v. PacifiCorp.*, where, in evaluating whether to permit the intervention of the Columbia Rural Electrical Association ("CREA"), the Commission observed that *Cole* preceded the adoption of the APA and the APA provided the legal rule for interventions post-*Cole*.⁶¹ NIPPC, however, disingenuously omitted from its Interlocutory Petition the Commission's note in the next paragraph that "The Commission's rule on intervention has been revised and recodified since the *Cole* decision, *but the substance of the rule remains essentially the same.*"⁶²

30 Accordingly, as explained above, *Cole* has been repeatedly cited by the Commission as the standard for evaluating interventions in post-APA cases, including *WUTC v. Cascade Natural Gas Corp.* (a 2007 decision more recent than the 2001 *PacifiCorp* decision cited by NIPPC). In that case, in addition to finding that CMS, an nonregulated competitor, could not demonstrate a substantial interest because it was not a customer of Cascade, the Commission also determined that under *Cole*, CMS could not demonstrate public interest because it could not show that it was "an essential or indispensable party" to its proceeding.⁶³ The ALJ made the same determination regarding NIPPC in this case.⁶⁴

31 NIPPC argues that *Cole* is inapplicable because as observed by the ALJ, the Commission has, in a "minority" of cases, granted intervention to entities whose interests were not in the

⁵⁹ *Id.*

⁶⁰ Interlocutory Petition, ¶ 19.

⁶¹ Docket No. UE-001734, Second Supplemental Order, ¶ 29 (July 9, 2001).

⁶² *Id.*, ¶ 30.

⁶³ Docket No. UG-070332, Order 02, ¶ 26.

⁶⁴ Order 04, ¶¶ 24-25.

interest of customers.⁶⁵ None of these cases, however, apply to NIPPC. For example, NIPPC cites to *In the Matter of the Proposal by Puget Sound Power & Light Company* (“PSP&L”) which was the Puget Power Sound Power & Light (“Puget Power”)-Washington Natural Gas (“WNG”) merger case where the Commission granted the intervention by Snohomish County PUD who sought intervention as a competitor to both entities.⁶⁶ The Commission granted Snohomish PUD’s intervention—on a restricted basis—because Snohomish County PUD was a customer of Puget Power and WNG, because it shared common customers with WNG, and because of anti-competitive harm to the marketplace that could have resulted from the merger, which would have directly impacted Snohomish PUD.⁶⁷ In contrast, in support of its public interest argument, NIPPC’s self-stated interest is to advance its “broad” electric policy goals and its speculative concern that its members might someday supply power to PSE customers that elect to utilize Schedule 451.⁶⁸ Unlike Snohomish County PUD, neither NIPPC nor its members have any actual nexus to Schedule 451 and the Commission’s justification for allowing limited intervention in that case is not warranted here.

32 Likewise, NIPPC reliance on the two PacifiCorp’s cases as justification for intervention also fails. Order 04 did not specifically address *PSP&L* or the PacifiCorp cases probably because they are factually unrelated.⁶⁹ In each of the PacifiCorp cases, the Commission permitted CREA to intervene on a restricted basis to understand how PacifiCorp’s customers

⁶⁵ Interlocutory Petition, ¶ 16.

⁶⁶ Docket UE-951270 & Docket UE-960195, Third Supplemental Order Modifying Prehearing Order (June 10, 1996).

⁶⁷ *Id.* at 4-6.

⁶⁸ Interlocutory Petition, ¶ 12.

⁶⁹ Order 04, ¶¶ 23-24.

would be affected by PacifiCorp's proposed tariffs, not how the tariff would impact CREA or its members as NIPPC seeks intervention for in the present case.⁷⁰

33 Finally, NIPPC cites the Commission's recent decision to allow the intervention of two HVAC trade associations that would be impacted by a PSE tariff that would directly compete with the trade associations' members by leasing HVAC equipment in the same marketplace.⁷¹ But again, as the ALJ observed, the intervention of the HVAC trade associations was warranted because PSE was seeking to enter the HVAC marketplace as a competitor and it was in the public interest for the associations to opine on how PSE's participation might impact the market.⁷² In acknowledging the distinct differences between the cases, NIPPC suggests that "[t]he most important question is not whether PSE wants to enter the independent power producers' market, but the impact on eligible customers and the ability of power suppliers to serve them. PSE's customers will be entering the competitive market, and Schedule 451 must be correctly designed to ensure that power suppliers can appropriately serve eligible customers under the Commission's laws and policies."⁷³

34 Ironically, however, NIPPC's suggestion that its intervention is necessary to protect the interest of customers is undermined by the fact that the chief PSE customer supporting Schedule 451—Microsoft—opposes NIPPC's intervention because by intervening in the matter, NIPPC could gain a competitive advantage over Microsoft for the benefit of its

⁷⁰ *Washington Utilities & Transportation Commission v. PacifiCorp, dba Pac. Power & Light Co.*, Docket No. UE-001734, Second Suppl. Order, ¶¶ 29, 33 (July 9, 2001); *Washington Utilities & Transportation Commission v. PacifiCorp dba Pac. Power & Light Co.*, Docket No. UE-130043, Order 03, ¶ 6 (Feb. 14, 2013).

⁷¹ Interlocutory Petition, ¶ 24.

⁷² Order 04, ¶ 22.

⁷³ *Id.*, ¶ 25.

members.⁷⁴ Again, NIPPC has not articulated with any specificity why PSE's customers need or even desire NIPPC's advocacy.

2. NIPPC's Desire to "Ensure the Competitive Markets and Retain Direct Access Programs Function Property and Are Consistent with State Regulatory Law and Policy" Are Not Grounds For Granting Intervention Nor Are They Credible Given NIPPC's Biased Perspective

35 NIPPC's Interlocutory Petition disingenuously paints itself as an altruistic, unbiased entity whose mission is to advance some idealistic conception of how it believes electricity markets should operate or to "ensure that whatever retail access program is ultimately adopted is successful."⁷⁵ But NIPPC's desire to promote its conception of how electric markets should operate does not constitute grounds for intervention, particularly when it is unclear how the public will be served by such a perspective, and when NIPPC's motivations are questionable. As noted above, despite the fact that NIPPC argues that it has a substantial interest in the proceeding because of the alleged "significant" competitive harm that Schedule 451 is to its members, NIPPC talks out of both sides of its mouth when it then argues that its participation is in the public interest because "NIPPC's primary purpose in intervening is *not* to advocate on behalf of its members as PSE's competitors."⁷⁶ NIPPC can't have it both ways and NIPPC's attempt to argue both sides undermines each position.

36 NIPPC also argues that its intervention is in the public interest because it is uniquely qualified to opine on nearly every issue in this case,⁷⁷ such that its participation is required for Schedule 451 to be successful.⁷⁸ PSE finds this preposterous. The collective knowledge and sophisticated experience of the parties currently participating in the docket include three PSE

⁷⁴ Order 04, ¶¶ 16, 24.

⁷⁵ *Id.*, ¶ 12.

⁷⁶ *Id.* (emphasis added)

⁷⁷ *Id.*, ¶ 23

⁷⁸ *Id.*, ¶¶ 25-29.

customers (Microsoft, Wal-Mart, The Kroger Company); three associations (Industrial Customers of Northwest Utilities, the Energy Project, and the Northwest Energy Coalition); as well as Commission Staff, Public Counsel, and PSE. NIPPC's suggestion that the parties currently participating are incapable of adequately addressing the issues that may arise during the proceeding is absurd. NIPPC also boasts of its broad experience "in numerous proceedings" and that it has never been denied intervention.⁷⁹ But neither of these grounds articulate why NIPPC would benefit the public in this proceeding. And, as the ALJ noted, if issues do arise that could benefit from additional expertise, any party could call additional witnesses, as needed, including perhaps representatives of NIPPC.⁸⁰ But NIPPC simply has not shown why, in light of the diverse number of experienced parties and stakeholders, that its additional participation is necessary to resolve the issues in Schedule 451.

3. NIPPC's Intervention Could Harm the Parties, Further Demonstrating That On Balance, NIPPC's Intervention Does Not Benefit the Public Interest

37 Finally, as discussed during the prehearing conference, PSE and Microsoft have significant concerns relating to NIPPC's ability to access confidential business materials.⁸¹ While NIPPC's attorneys assure the Commission that this will not be an issue, PSE remains unconvinced and believes on balance, the concern that NIPPC could have confidential business information weighs against granting intervention.

IV. CONCLUSION

38 For the reasons stated above, PSE respectfully requests that the Commission deny NIPPC intervention in this matter.

⁷⁹ *Id.*, ¶¶ 13-15.

⁸⁰ Order 04, ¶ 25.

⁸¹ TR. 14: 8-15:2; Order 04, ¶ 24.

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